

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

NICOLAS SANCHEZ-GARCIA)
ID # 32518-177,)
)
Petitioner,) CRIMINAL ACTION NO.
)
VS.) 3:04-CR-014-G
)
UNITED STATES OF AMERICA,)
)
Respondent.)

**ORDER ACCEPTING FINDINGS AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE**

After reviewing all relevant matters of record in this case, including the findings, conclusions, and recommendation of the United States Magistrate Judge and any objections thereto, in accordance with 28 U.S.C. § 636(b)(1), the court is of the opinion that the findings and conclusions of the magistrate judge are correct and they are accepted as the findings and conclusions of the court. For the reasons stated in the findings, conclusions, and recommendation of the United States Magistrate Judge, the motion is construed as a motion to vacate and is **TRANSFERRED** to the United States Court of Appeals for the Fifth Circuit pursuant to *United States v. Fulton*, 780 F.3d 683 (5th Cir. 2015).

In accordance with FED. R. APP. P. 22(b) and 28 U.S.C. § 2253(c) and after considering the record in this case and the recommendation of the magistrate judge, the court **DENIES** the petitioner a certificate of appealability. The court adopts and incorporates by reference the magistrate judge's findings, conclusions and recommendation filed in this case in support of its finding that no certificate of appealability is required to appeal an order that transfers a motion to vacate to the United States Court of Appeals for the Fifth Circuit pursuant to *Fulton*, 780 F.3d at 686.*

* Rule 11 of the Rules Governing §§ 2254 and 2255 Cases, as amended effective on December 1, 2009, reads as follows:

(a) Certificate of Appealability. The district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant. Before entering the final order, the court may direct the parties to submit arguments on whether a certificate should issue. If the court issues a certificate, the court must state the specific issue or issues that satisfy the showing required by 28 U.S.C. § 2253(c)(2). If the court denies a certificate, the parties may not appeal the denial but may seek a certificate from the court of appeals under Federal Rule of Appellate Procedure 22. A motion to reconsider a denial does not extend the time to appeal.

(b) Time to Appeal. Federal Rule of Appellate Procedure 4(a) governs the time to

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The clerk of the court is **DIRECTED** to (1) terminate the post-judgment motion (docket entry 91) in this case; (2) open a new habeas case for administrative purposes only; (3) docket the post-judgment motion (docket entry 91) in that new case as a 28 U.S.C. § 2255 motion filed November 15, 2017; (4) directly assign the new case to the same district judge and magistrate judge as in this case; (5) file a copy of the findings, conclusions, and recommendation of the United States Magistrate Judge and the order accepting those findings, conclusions, and recommendation, and the judgment in that new case; and (6) and without further judicial action, immediately **TRANSFER** the newly opened § 2255 action to the United States Court of Appeals for the Fifth Circuit.

In the event that the petitioner files a notice of appeal, he must pay the \$505.00 appellate filing fee or submit a motion to proceed *in forma pauperis* that is accompanied by a properly signed certificate of inmate trust account.

SO ORDERED.

December 12, 2017.



A. JOE FISH
Senior United States District Judge

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appeal an order entered under these rules. A timely notice of appeal must be filed even if the district court issues a certificate of appealability.